IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.3029 of 2007

M/s. MIRC Electronics Ltd. Applicant
Vs.
M/s. Teja Electronics & ors. Respondents

Mr.Prakash Naik for applicant.
Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 18, 2007.

P.C.

. Heard Mr.Naik, the learned counsel for the applicant - company which is seeking leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal dated 8/6/2007 passed by the learned Judicial Magistrate, First Class at Wada.

. The applicant claims to be a Public Limited Company engaged in the manufacture of TV sets and it had appointed the respondent-accused as a dealer. The subject cheque at Exhibit 21 drawn in the sum of Rs.3,34,566/- was returned dishonoured by the Bank at Wada on 25/5/2005. Legal notice was issued by the applicant - company and the same was not replied by the accused. Consequently SCC No.280 of 2005 came to be filed by the present applicant for the offence

punishable under Section 138 of the Negotiable Instruments Act, 1881.

. The accused had taken a defence that the subject cheque was not issued by him against the debt or any legally enforceable liability though he had signed the cheque. It was submitted that the cheque was undated and it was issued in the year 2001 by way of security as a blank cheque. On behalf of the complainant Suhas Bhikaji Kanherkar who was the constituted attorney, was examined as PW 1 whereas for the accused no.1 Dealership its partner Mr. P. Narsareddy was examined as DW 1 and Mr. S.K. Bishwas who was at the relevant time Assistant Branch Manager of the Bank of India at Nijamabad Branch was examined as DW 2. The accused in his evidence before the trial Court stated that he used to purchase colour TV sets from the complainant - company and within ten to fifteen days he used to make payment by Demand Drafts against the invoices and there was no outstanding amount against him whatsoever. The statement at Exhibit 36 was in respect of the cheque book containing cheque nos.0023201 to 0023250. He also admitted that he had taken other cheque books from the Bank and emphasised that he had stopped

purchasing TV sets from the complainant company since November 2005. He submitted that the dishonoured cheques were issued in November 2001 (cheque nos. 0023245 and 0023246). DW 2 Mr. S.K. Bishwas in his cross-examination stated that the account of the accused no.1 - Firm was opened on 8/8/2001 and it was closed on 28/9/2004 on which date there was nil balance in the said account. He further stated that from July 2003 the said account was not operated.

. Under these circumstances, it was necessary for the complainant to prove that the cheque was issued against an outstanding debt or any legally enforceable liability. There were no bills brought on record nor were there any invoices for supplies made to the accused no.1 - Firm and the statement of account indicating the outstanding amount of Rs.3,34,566/-. Even in the complaint no such details were provided except a bald statement that the accused were liable to pay an amount of Rs.3,34,566/- against which the subject cheque was issued. The burden to prove that the cheque was issued against the debt or any other legally enforceable liability squarely rested on the complainant - company and it failed to discharge the same. The trial Court noted

on examination of the cheque at Exhibit 21 that it was a blank cheque issued initially and the date and the amount was subsequently scribed in different ink. The trial Court, therefore, accepted the contention of the accused that the cheque was issued by way of surety and not against any debt or any other legally enforceable liability. The view taken by the trial Court cannot be faulted with and, therefore, the reasoning set out in support of the order of acquittal does not require any reconsideration at the hands of this Court.

. Hence leave to appeal is hereby refused and the application is rejected.

(B.H.MARL